



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Jay Dee Militarywear, Inc.--Reconsideration

**File:** B-243437.2

**Date:** October 24, 1991

Paul G. Dembling, Esq., and Paula K. Goldman, Esq., Schnader, Harrison, Segal & Lewis, for the protester. Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration of denial of protest against the sole-source award of a contract for ground troop protective vests is denied where one basis for request was available, but not submitted or argued during consideration of the initial protest, and other arguments on reconsideration are repetition of arguments previously made which do not provide any basis for reconsideration.

### DECISION

Jay Dee Militarywear, Inc. requests reconsideration of our decision Jay Dee Militarywear, Inc., B-243437, July 31, 1991, 91-2 CPD ¶ 105, in which we denied Jay Dee's protest against the Defense Logistics Agency (DLA's) sole-source award of contract No. DLA100-91-D-0385 to Isratex, Inc. for a type of body armor known as ground troop fragmentation vests.

We deny the request for reconsideration.

Jay Dee argued in its protest that DLA could not justify the noncompetitive award because other capable sources, including Jay Dee, were available and known to the agency at the time Isratex was selected. Jay Dee further contended that Isratex had not previously produced the item and therefore should not have been awarded the contract.

This procurement was initiated at the time the Operation Desert Shield buildup, in response to the Iraqi invasion of Kuwait in August 1990, was progressing in the Middle East. The fragmentation vests were issued extensively to Operation

Desert Shield personnel, and continued to be needed for regular armed forces training requirements. We found that the agency had reasonably determined that Isratex was the only known firm capable of expeditiously meeting the urgent supply requirement caused by Operation Desert Shield and Operation Desert Storm, and denied the protest on that basis. We also found that to the extent Jay Dee argued that it was unreasonable for the contracting officer to award Isratex the contract based on its lack of experience in producing this item, that Isratex bound itself to meet the expedited delivery and testing requirements and, furthermore, that the argument challenged the contracting officer's affirmative determination of responsibility which was not for our review in the circumstances presented.

The request for reconsideration is allegedly based on information not previously considered. Jay Dee has submitted copies of correspondence between Isratex and DLA's Defense Personnel Support Center (DPSC) to support a new argument that Isratex had improper communications with DPSC prior to the publication of a purchase request and synopsis of the requirement in the Commerce Business Daily.

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which a reversal or modification of the initial decision is warranted as well as specify any errors of law made or information not previously considered by this Office in rendering its prior decision. 4 C.F.R. § 21.12(a). Information not previously considered means information that was not available when the initial protest was filed. S/A Baltimore-I Ltd. Partnership--Recon., B-241050.3, Jan. 14, 1991, 91-1 CPD ¶ 33. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum--to produce fair and equitable decisions based on consideration of both parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Id.

The record shows that the correspondence upon which Jay Dee bases its request was included in the record on the initial protest. The letters at issue were provided by the agency in a "Supplemental Document Submission" to support the agency's protest report. The protester discussed the letters in its comments on the agency report, arguing, for example, that a letter from Isratex on December 10, 1990, "referencing discussions between Isratex and [DPSC]" and discussing Isratex's production capabilities demonstrated that "DPSC was discussing a sole-source exigency procurement with Isratex" at that time. Jay Dee alleged that the letters "cast serious doubt on the credibility" of the agency report and somehow "suggested" that it was DPSC's

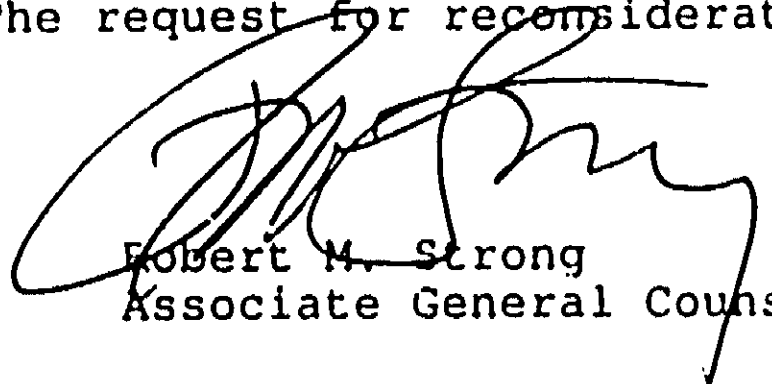
intention to award the contract to Isratex on a sole-source exigency basis as early as December 1990, before any unusual and compelling urgency existed to justify it and that the sole-source award was the result of a lack of advance planning.

In our decision, we found that the record did not show any lack of advance planning. We noted that while DLA was aware of the need for the vests in October 1990, the agency initially considered a competitive acquisition and mobilization base acquisition. It executed the urgency award only after the war had begun and its stock was being rapidly depleted.

To the extent Jay Dee is now arguing that this correspondence represents "information that was not available when the initial protest was filed," the protester is clearly mistaken. As stated above, the record shows that the protester had this information in its possession during the original protest. Thus, its argument now that these documents constituted improper communications between Isratex and DLA in December, based on information previously available, is not timely raised. S/A Baltimore-I Ltd. Partnership--Recon., B-241050.3, supra.

Jay Dee also argues that DLA could not justify its decision to award the contract to Isratex because the firm had never produced this particular item before, and that it was unreasonable for the agency to conclude that Jay Dee could not meet the agency's delivery requirements. Both of these arguments merely restate or repeat portions of the prior protest, which were considered in our prior decision; they do not provide any basis for reconsideration. R.E. Scherrer, Inc.--Recon, B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.



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